

Before the  
**TENNESSEE REGULATORY AUTHORITY**

In the Matter of )  
)  
UNIVERSAL TELECOM, INC. )  
Complainant )  
v. )  
)  
BELLSOUTH )  
TELECOMMUNICATIONS, INC. )  
Defendant )

Docket No.

01-00613

**FORMAL COMPLAINT**

Complainant, Universal Telecom, Inc. ("Universal Telecom"), by its counsel, for its complaint pursuant to sections 251 and 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"), and T.C.A. §§ 65-4-123, 65-5-201, and 65-5-204 against BellSouth Telecommunications, Inc. ("BellSouth") states as follows.

**INTRODUCTION**

1. The full name and address of Universal Telecom is Universal Telecom, Inc., P.O. Box 679, LaGrange, Kentucky 40031. The Tennessee Regulatory Authority (the "TRA") granted Universal Telecom authority to resell telecommunications services in Tennessee on May 4, 1999, in Case Number 99-00237 (See Exhibit A).

2. Correspondence regarding this complaint should be sent to Universal Telecom at the following address.

David Wigginton  
Universal Telecom, Inc.  
P. O. Box 679  
LaGrange, Kentucky 40031  
(502) 222-9004.

3. Correspondence regarding this complaint should be sent to Universal Telecom's attorneys at the following address.

Michael J. Blade  
**DINSMORE & SHOHL LLP**  
Suite 1100, NationsBank Plaza  
414 Union Street  
Nashville, TN 37219  
(615) 313-3300

John E. Selent  
Edward T. Depp  
**DINSMORE & SHOHL LLP**  
2000 Meidinger Tower  
462 South Fourth Avenue  
Louisville, KY 40202  
(502) 540-2300

4. The full name of BellSouth is BellSouth Telecommunications, Inc., and any correspondence regarding this matter should be directed to:

BellSouth Telecommunications, Inc.  
Account Team  
600 North 19<sup>th</sup> Street  
Birmingham, AL 35203

and

BellSouth Telecommunications, Inc.  
General Attorney – COU  
Suite 4300  
675 W. Peachtree St.  
Atlanta, GA 30375.

5. The facts upon which this complaint is based are set forth more fully in the body of the complaint and exhibits hereto. Briefly, Universal Telecom's complaint against BellSouth concerns BellSouth's violation of sections 251 and 252 of the Act, and T.C.A. §§ 65-4-123, 65-5-201, and 65-5-204 by refusing to provide Universal Telecom

with a discount rate reflecting the fact that BellSouth does not provide operator service/directory assistance (“OS/DA”) services to Universal Telecom.

6. Despite several attempts at negotiation, Universal Telecom has been unable to resolve this issue and therefore has no choice but to request that the TRA direct BellSouth to provide Universal Telecom with the discount rate associated with those costs BellSouth avoids by not providing OS/DA services to Universal Telecom. As described below, BellSouth’s position is plainly in violation of the Act, the Tennessee Code, and general public policy.

7. Therefore, Universal Telecom respectfully requests that the TRA commence a contested case against BellSouth. In that case, Universal Telecom respectfully requests that the TRA take the following immediate actions:

- (a) issue a declaratory ruling that BellSouth avoids costs for OS/DA services when Universal Telecom does not allow its customers to access OS/DA services; and
- (b) issue an Order compelling BellSouth to provide Universal Telecom with the 21.56% discount rate on both a retroactive and prospective basis for that period within which Universal Telecom has not allowed its customers to access OS/DA services.

8. In the alternative, Universal Telecom respectfully requests that the TRA take the following immediate actions:

- (a) issue an Order compelling BellSouth to unbundle OS/DA services from its agreement with Universal Telecom so that Universal Telecom customers will no longer be forced to pay for services not resold to them by Universal Telecom; and

- (b) issue an Order compelling BellSouth to provide Universal Telecom with the 21.56% discount rate, effective March 8, 2001 (30 days after Universal Telecom's request that BellSouth unbundle OS/DA services).

## **II. JURISDICTON**

9. Universal Telecom is a competitive local exchange carrier ("CLEC") authorized to provide local exchange services in Tennessee and other states. Universal Telecom currently provides service in Tennessee through the resale of BellSouth wholesale products.

10. BellSouth is a Regional Bell Operating Company that, among other things, provides switched local exchange and other telecommunications services in nine southern states. It is an incumbent local exchange carrier ("ILEC"), as defined in section 251(h) of the Act, authorized to provide local exchange services in areas in Tennessee currently served by Universal Telecom.

11. Section 252(d)(3) of the Act confers jurisdiction on the TRA and provides that "a State commission shall determine wholesale rates" for purposes of interconnection.

12. The TRA also has jurisdiction to consider this complaint pursuant to T.C.A. § 65-5-201, which provides that the TRA has the power to fix just and reasonable individual rates. . . "whenever the authority shall determine any existing individual rate. . . to be unjust, unreasonable, excessive. . . [or] unjustly discriminatory. . . howsoever the same may have heretofore been fixed or established."

**III. BELLSOUTH HAS VIOLATED ITS DUTY UNDER BOTH THE ACT AND THE TENNESSEE CODE TO OFFER TELECOMMUNICATIONS SERVICES FOR RESALE AT JUST, REASONABLE, AND NONDISCRIMINATORY RATES.**

**A. The applicable law.**

13. Section 251 of the Act<sup>1</sup> requires that all local exchange carriers (“LEC’s”) interconnect their networks with those of competing service providers upon request. An ILEC has certain additional obligations under section 251(c)<sup>2</sup>, including the duty to provide rates, terms, and conditions that are just, reasonable, and nondiscriminatory under section 252.<sup>3</sup>

14. One of these ILEC-specific duties legislated under Section 251(c)(4)<sup>4</sup> is a duty to offer CLEC’s the opportunity to purchase, at wholesale rates, the ILEC’s telecommunications services.

15. Section 252(d)(3)<sup>5</sup> addresses “wholesale rates,” providing that “a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.”

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<sup>1</sup> 47 U.S.C. § 251.

<sup>2</sup> 47 U.S.C. § 251(c).

<sup>3</sup> 47 U.S.C. § 252.

<sup>4</sup> 47 U.S.C. § 251(c)(4).

<sup>5</sup> 47 U.S.C. § 252(d)(3).

16. In addition to the provisions of the Act, T.C.A. § 65-4-123, establishes a Tennessee policy “to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets.” Furthermore, the legislature provided, “[T]he regulation of telecommunications services and telecommunications services providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider.”

17. To these ends, the legislature provided (in T.C.A. § 65-5-204):

(a) No public utility shall:

(1) Make, impose, or exact any unreasonable, unjustly discriminatory or unduly preferential individual or joint rate. . . for any . . . service supplied or rendered by it within this state.”

18. Consistent with its state policy and the prohibition on unreasonable or discriminatory rates, the Tennessee legislature has granted the TRA the power to fix just and reasonable rates, “whenever the [TRA] shall determine any existing individual rate, joint rate. . . to be unjust, unreasonable, excessive. . . or unjustly discriminatory. . . howsoever the same may have heretofore been fixed or established.”

**B. The factual background.**

19. As an integral part of its business plan, Universal Telecom prohibits its customers from accessing OS/DA services. Universal Telecom’s business consists of selling local exchange carrier services on a *prepaid* basis only. Generally, these services are purchased by credit-challenged individuals unable to afford the deposit required by the ILEC. By selling to these customers on a prepaid basis, Universal Telecom is able to provide telecommunications services to individuals who would not, otherwise, have

convenient access to telecommunications services. However, because of the credit risk involved with its customers, Universal Telecom blocks access to all telecommunications services (including OS/DA services) for which a charge, other than the prepaid charge, could be assessed. Universal Telecom customers cannot and do not access OS/DA services.

20. Under the Agreement between Universal Telecom and BellSouth, OS/DA services are bundled services.

21. The Agreement provides for a 16% discount rate in Tennessee on the resale of bundled services. The Agreement also provides that:

In Tennessee, if Universal Telecom, Inc. provides its own operator services and directory services, the discount shall be 21.56%. Universal Telecom, Inc. must provide written notification to BellSouth within 30 days prior to providing its own operator services and directory services to qualify for the higher discount rate of 21.56%.

22. BellSouth has asserted its position that Universal Telecom does not qualify for the 21.56% discount rate unless and until 30 days after Universal Telecom provides BellSouth with written notification that Universal Telecom will begin providing its own OS/DA services, either through itself or through an independent provider.

23. Universal Telecom will neither provide nor outsource its OS/DA services because the provision of OS/DA services is a business risk that Universal Telecom cannot bear.

24. Nevertheless, Universal Telecom maintains its position that it should not be made to pay for OS/DA services it does not use. BellSouth does not incur a cost for the provision of OS/DA services to Universal Telecom when Universal Telecom prohibits its customers from accessing OS/DA services. Further still, BellSouth cannot

exercise its power as ILEC to *require* Universal Telecom to provide services that, in Universal Telecom's business judgment, undermine the company's strategic goals.

25. Universal Telecom has made several written requests to BellSouth for the 21.56% discount rate. Each request has been met in turn with either nonresponsiveness or an exceedingly strained interpretation of FCC and TRA orders having, at best, marginal applicability to the present circumstances. (See Exhibits B-J, chronologically reproducing the correspondence between Universal Telecom and BellSouth regarding this issue.) In all events, however, BellSouth's replies have completely avoided the spirit and letter of both the Act and the Tennessee Code, which is, in part, to promote competition in the telecommunications industry by allowing CLEC's to purchase telecommunications services (for resale) at rates not inflated by costs that the ILEC does not incur by virtue of a resale arrangement.

**C. Universal Telecom is entitled to the 21.56% discount rate.**

26. BellSouth's failure to provide Universal Telecom with the 21.56% discount rate that BellSouth gives to other CLEC's providing their own OS/DA services constitutes unjust, discriminatory practices in violation of sections 251 and 252 of the Act and T.C.A. §§ 65-4-123, 65-5-201, and 65-5-204.

27. In its Final Order in Docket No. 96-01331, entitled "The Avoidable Costs of Providing Bundled Service for Resale by Local Exchange Telephone Companies," the TRA ordered that the wholesale discount rate for BellSouth for bundled services, including OS/DA services, be set at 16%.

28. However, in its Final Order and Arbitration Award in Docket No. 96-01271, the TRA set the wholesale discount rate for retail services sold by BellSouth, where OS/DA services are not bundled, at 21.56%. The TRA's justification for this



higher discount rate was that because BellSouth was not providing OS/DA services to MCI, 100% of Account 6621 (“Call Completion”) and Account 6622 (“Number Services”) constituted directly avoided expenses for BellSouth.

29. The facts essential to the TRA’s conclusion (with respect to MCI’s non-use of BellSouth OS/DA services) in the MCI arbitration are identical to the current situation with Universal Telecom: BellSouth does not incur Call Completion or Number Services expenses for Universal Telecom customers. This is true because Universal Telecom does not allow its customers to utilize OS/DA services, which lead to Call Completion and/or Number Services expenses. Thus, because BellSouth completely avoids these expenses with respect to Universal Telecom, those avoided costs should be calculated into the discount rate to which Universal Telecom is entitled in Tennessee.

30. If MCI is entitled to a 21.56% discount rate because under its arrangement with BellSouth, BellSouth does not incur Call Completion and/or Number Services expenses, then Universal Telecom is entitled to the same 21.56% discount rate. The fact that Universal Telecom chooses not to provide independent OS/DA is entirely irrelevant to the calculation of a discount rate.

31. However, BellSouth has adopted the position that regardless of the fact that Universal Telecom customers are prohibited from accessing OS/DA services, BellSouth is only required to provide a 16% discount rate. BellSouth has told Universal Telecom that the only way it can qualify for the 21.56% discount rate is if Universal Telecom provides its *own* OS/DA services, either by itself or through an independent provider. (See Exhibit J).

32. BellSouth’s position is unjust, unreasonable, and discriminatory in violation of sections 251 and 252 of the Act as well as T.C.A. §§ 65-4-123, 65-5-201, and

65-5-204. In essence, BellSouth has said that Universal Telecom can continue to operate under the Agreement and pay for the bundled OS/DA services that Universal Telecom customers are not allowed to access; *or* Universal Telecom can abandon its business strategy and provide its own OS/DA services.

33. Both options are patently unfair and unreasonable; and in fact, this constitutes an unreasonable discrimination against Universal Telecom in that BellSouth is agreeing to provide a discount to certain LEC's (but not Universal Telecom) on the basis of a distinction without a difference: the independent provision of OS/DA services. As the TRA has made clear in its orders, the crucial determinant is whether the ILEC avoids costs under the particular resale arrangement, not whether the CLEC provides OS/DA services. BellSouth avoids Call Completion and Numbering Services expenses when Universal Telecom prohibits its customers from accessing OS/DA services. That savings to BellSouth must be passed on to Universal Telecom.

**D. In the alternative, BellSouth should unbundle OS/DA services for Universal Telecom.**

34. Even if the TRA agrees that BellSouth can nevertheless charge Universal Telecom for OS/DA services that its customers are prohibited from accessing, the TRA should require BellSouth to unbundle OS/DA so that Universal Telecom is not *forced* to pay for services that are counterproductive to its business strategy. If the TRA requires BellSouth to unbundle OS/DA so that Universal Telecom will qualify for the 21.56% discount rate, Universal Telecom will be able to offer a more competitive service, thus allowing more individuals an opportunity to purchase telecommunications services they could not otherwise purchase.

35. BellSouth has refused to unbundle OS/DA services by relying on the Federal Communication Commission's (FCC) Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-328 (Unbundled Network Element (UNE) Remand Order), which provides that an ILEC is not required to provide OS/DA services as a UNE if it provides customized routing to a requesting carrier to allow the requesting carrier to route traffic to alternative OS/DA service providers.

36. That FCC Order is entirely inapplicable to the present circumstances. Paragraph 462 of the Order provides:

. . . Commenters state that a key component of providing carriers with a choice of competitive OS/DA suppliers is the availability of line class codes in the unbundled switching element. Lack of a customized routing solution that enables competitors to route traffic to alternative OS/DA providers would therefore effectively preclude competitive LEC's from using such alternative providers. Thus, if an incumbent LEC does not provide customized routing to requesting carriers that use the incumbent's unbundled switching element, it must provide unbundled access to its OS/DA service.

37. As the excerpt above clarifies, the FCC Order upon which BellSouth relies addresses the issue of whether an ILEC must provide *access* to OS/DA services as a UNE. Universal Telecom seeks the opposite: *no access* to OS/DA. Thus, while there may be a legitimate rationale for requiring ILEC's to *offer* OS/DA services as a UNE only when the ILEC does not provide sufficient customized routing so that the CLEC can utilize alternative providers, there is no rational basis to conclude that that FCC Order also implies an ILEC can force a CLEC to purchase OS/DA from them, unless the CLEC uses an alternative provider. The FCC's Order is premised on a rational set of factors and looks to further implement the pro-competitive policies of the Act; BellSouth's extrapolation of that Order ignores the entirely different circumstances presented by

Universal Telecom's request and then proceeds to pervert the pro-competitive goals of the Act by requiring a small competitor to purchase and retain OS/DA services that are counter-productive to its business strategy.

38. The real impact of BellSouth's position, however, is felt by Universal Telecom's customers, who must ultimately bear the cost of the OS/DA services they are not allowed to access. Typically, these customers already have difficulty securing telecommunications services, and Universal Telecom – consistent with the Tennessee policy of developing an efficient, technologically advanced, *statewide* system of telecommunications services – assists them in this respect by providing access to telecommunications services on a prepaid basis. BellSouth has adopted a position that (through no fault of Universal Telecom) ultimately requires the customers to pay for more than they receive.

39. Accordingly, the TRA should recognize BellSouth's position as unfair, unreasonable, and discriminatory in violation of sections 251 and 252 of the Act and T.C.A. §§ 65-4-123, 65-5-201, and 65-5-204. BellSouth's position places Universal Telecom at a competitive disadvantage and harms the public by forcing it to pay inflated rates (at BellSouth's benefit) for telecommunications services.

WHEREFORE, Universal Telecom respectfully requests that the TRA:

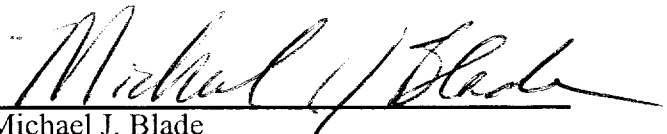
- (1) (a) Issue a declaratory ruling that BellSouth avoids costs for OS/DA services when Universal Telecom does not allow its customers to access OS/DA services; and
- (b) Issue an Order compelling BellSouth to provide Universal Telecom with the 21.56% discount rate on both a retroactive and

prospective basis for that period within which Universal Telecom  
has not allowed its customers to access OS/DA services.

(2) In the alternative, Universal Telecom respectfully requests that the TRA  
take the following immediate actions:

- (a) Issue an Order compelling BellSouth to unbundle OS/DA services  
from its agreement with Universal Telecom so that Universal  
Telecom will no longer be forced to pay for services it neither  
desires nor allows its customers to use; and
- (b) Issue an Order compelling BellSouth to provide Universal  
Telecom with the 21.56% discount rate, effective March 8, 2001  
(30 days after Universal Telecom's request that BellSouth  
unbundle OS/DA services).

Respectfully submitted,

  
Michael J. Blade  
**DINSMORE & SHOHL LLP**  
Suite 1100, NationsBank Plaza  
414 Union Street  
Nashville, TN 37219  
(615) 313-3300

John E. Selent  
Edward T. Depp  
**DINSMORE & SHOHL LLP**  
2000 Meidinger Tower  
462 South Fourth Avenue  
Louisville, KY 40202  
(502) 540-2300

**COUNSEL TO UNIVERSAL  
TELECOM, INC.**

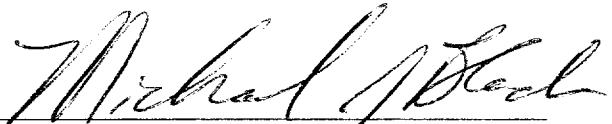


## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served via first class United States mail, this 11<sup>th</sup> day of July, 2001, on:

BellSouth Telecommunications, Inc.  
Account Team  
600 North 19<sup>th</sup> Street  
Birmingham, AL 35203

BellSouth Telecommunications, Inc.  
General Attorney – COU  
Suite 4300  
675 W. Peachtree St.  
Atlanta, GA 30375



Michael J. Blade  
**DINSMORE & SHOHL LLP**  
Suite 1100, NationsBank Plaza  
414 Union Street  
Nashville, TN 37219  
(615) 313-3300

John E. Selent  
Edward T. Depp  
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2000 Meidinger Tower  
462 South Fourth Avenue  
Louisville, KY 40202  
(502) 540-2300

**COUNSEL TO UNIVERSAL  
TELECOM, INC.**

C:\NRPORTBL\LOUIS\edepp\60168.1

Company ID: 128334

Universal Telecom, Inc.  
210 South First Street, Suite-A  
LaGrange, KY 40031

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, TN May 4, 1999

IN RE: CASE NUMBER: 99-00237

Application for Authority to Provide Operator Services and/or Resell Telecommunications  
Services in Tennessee Pursuant to Rule 1220-4-2-.57.

—ORDER—

This matter is before the Tennessee Regulatory Authority upon the application of the above-mentioned company for certification as a reseller or telecommunication operator service provider in Tennessee. The TRA considered this application at a Conference held on May 4, 1999 and concluded that the applicant has met all the requirements for certification and should be authorized to provide operator services and/or resell telecommunications services on an intrastate basis.

IT IS THEREFORE ORDERED:

1. That the above-mentioned company is issued a Certificate of Convenience and Necessity as an operator service provider and/or reseller of telecommunications services for state-wide service in Tennessee as specified in its application on file with the Authority.
2. That said company shall comply with all applicable state laws and TRA rules and regulations.
3. That this order shall be retained as proof of certification with this Authority, and may be used to obtain appropriately tariffed service and billing arrangements from Authority authorized telecommunications service providers.

  
Chairman

  
Director

ATTEST:

  
Executive Secretary

  
Director



# DINSMORE & SHOHL LLP

Attorneys at Law

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414 Union Street  
Nashville, Tennessee 37219  
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Christine L. Connolly

Direct Dial: (615) 313-3341  
E-Mail: [cconnoll@dinslaw.com](mailto:cconnoll@dinslaw.com)

December 11, 2000

BellSouth Telecommunications, Inc.  
Account Team  
600 N. 19th Street  
Birmingham, Alabama 35203

General Attorney-COU  
Suite 4300  
675 W. Peachtree Street  
Atlanta, Georgia 30375

**RE: Universal Telecom, Inc.**

Dear Madam or Sir:

We are legal counsel to Universal Telecom, Inc. ("Universal Telecom"). Universal Telecom is party to an interconnection agreement with BellSouth Telecommunications, Inc. ("BellSouth") dated October 16, 2000 (the "Agreement").

As its legal counsel, Universal Telecom has requested us to write to BellSouth regarding an issue that has arisen under the Agreement. Specifically, the issue is whether the applicable discount rate under the Agreement, and Exhibit A thereto, is 16% or 21.56%. Pursuant to a footnote to Exhibit A to the Agreement, we believe that Universal Telecom should be provided a discount of 21.56%, and not 16%. Specifically, this footnote provides as follows:

In Tennessee, if Universal Telecom, Inc. provides its own operator services and directory services, the discount shall be 21.56%. Universal Telecom, Inc. must provide written notification to BellSouth within 30 days prior to providing its own operator services and directory services to qualify for the higher discount rate of 21.56%.

Universal Telecom believes that it is entitled, under the Agreement, to the higher discount rate of 21.56%. This belief is based upon the fact that Universal Telecom blocks its customers' access, as a matter of its business judgment, to BellSouth's operator and directory services. Universal Telecom does so because its business consists of the reselling local exchange carrier services on a prepaid basis only. These services are generally purchased by credit challenged individuals who could not afford the deposit required by the incumbent local exchange carrier. Under

Bell South Telecommunications, Inc.  
General Attorney-COU  
December 11, 2000  
Page 2

these circumstances, Universal Telecom blocks access to all telecommunications services for which an additional charge, other than the prepaid charge, may be made, and this includes operator services and directory assistance services.

The bottom line is that BellSouth does **not** provide these operator and directory services to the customer base of Universal Telecom. Therefore, because BellSouth does not incur any costs by the rendition of these services, Universal Telecom should be entitled to a discount rate of 21.56%. There is no reason why BellSouth should be able to charge Universal Telecom for the costs associated with providing services which Universal Telecom's customer base cannot, and does not, in fact, use. We believe this higher discount rate is mandated by the Telecommunications Act of 1996, as well as by applicable decisions of the Tennessee Regulatory Authority. Any other conclusion is inconsistent with the public interest in the development of local exchange carrier competition and is an abuse of BellSouth's monopoly power.

We, therefore, request that you immediately accord Universal Telecom a 21.56% discount in the State of Tennessee, and that you refund, from the effective date of the interconnection agreement preceding the Agreement (which was February 25, 1999 and whose provisions with respect to this issue were exactly the same), the amount that Universal Telecom has paid in excess of the discounted rate of 21.56%. Specifically, Universal Telecom asks to be paid 5.56% of the total sums that it has, to date, paid BellSouth under the Agreement and the prior agreement, plus the applicable interest rate on that amount.

We anticipate an affirmative reply from you within two weeks from the date of this letter. If we do not receive an affirmative reply within that time, we will consult with our client about the legal options available to it before the Tennessee Regulatory Authority, and otherwise.

Thank you, and we look forward to your prompt and affirmative response to this letter by not later than two weeks from its date.

Very truly yours,

DINSMORE & SHOHL LLP



Christine L. Connolly

CLC/bmt

cc: David Wigginton  
Stacey Freeland  
John E. Selent



BellSouth Telecommunications, Inc.

January 18, 2001

Ms. Christine L. Connolly, Esq.  
Dinsmore & Shohl, LLP  
Attorneys at Law  
Bank of America Plaza, Suite 1100  
414 Union Street  
Nashville, Tennessee 37219

RE: Universal Telecom, Inc.

Dear Ms. Connolly:

This is in response to your December 11, 2000 letter regarding Universal Telecom, Inc. (Universal Telecom). I apologize for the delay in our response. BellSouth appreciates your patience while we investigated the issues raised in your letter.

On the basis of our investigation, we respectfully disagree with Universal Telecom's conclusion that it is entitled to a discount of 21.56% on resold services under its Resale Agreement with BellSouth. This discount was established by the Tennessee Regulatory Authority (TRA) in the Second and Final Order of Arbitration Awards in TRA Dockets 96-01152 and 96-01271. An issue was raised in the arbitration proceeding by a facilities-based carrier who wished to provide its own directory assistance and operator services. The TRA Directors, serving as Arbitrators in this matter, ruled that a discount of 21.56% applies when operator services and directory assistance are not bundled with BellSouth's retail services. Under this unbundled arrangement, BellSouth would arrange its network so as to automatically route all directory assistance and operator services calls from that carrier's customers to a destination specified by that carrier.

Universal Telecom is currently electing to use various optional services available in BellSouth's retail services tariffs to block access by its customers to BellSouth's directory assistance and operator services. However, directory assistance and operator services remain bundled with the resold services provided to Universal Telecom's customers, and these services can still be accessed by Universal Telecom's customers at any time by simply removing the blocking feature. Therefore, Universal Telecom is in a different situation than the facilities-based carrier who initiated the issue under arbitration.

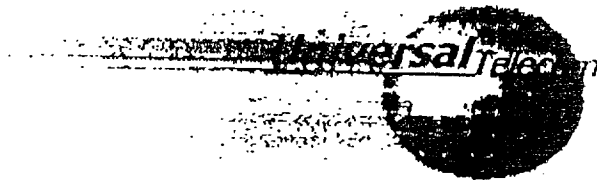
I trust that the above information satisfies your concerns regarding this issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "David Stark", written over a horizontal line.

David Stark  
Sales Director  
BellSouth- ICS

Universal Telecom, Inc.  
P.O. Box 679  
LaGrange, KY 40031



February 6, 2001

BellSouth Telecommunications, Inc.  
Account Team  
600 N. 19th Street  
Birmingham, AL 35203

General Attorney-COU  
Suite 4300  
675 W. Peachtree Street  
Atlanta, GA 30375

RE: Universal Telecom, Inc.

Dear Madam or Sir:

This letter shall serve as Universal Telecom, Inc.'s notice pursuant to attachment 1, page 16, Exhibit A ("Applicable Discounts") of the Agreement dated October 16, 2000, that Universal Telecom, Inc., will not require BellSouth's operator and directory services in the future. This change in service shall be effective thirty days from today.

In accordance with its rights under that attachment, Universal Telecom, Inc., requests that BellSouth provide it with the 21.56 % discount rate, effective thirty days from today, agreed to in that attachment.

Thank you.

Sincerely,

A handwritten signature in cursive script, reading "David Wigginton".

David Wigginton  
President, Universal Telecom, Inc.

:rm

:ODMA\HODMA\LOUIS;56417;1



BellSouth Interconnection Services  
3470 BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375

February 27, 2001

Mr. David Wigginton  
President  
Universal Telecom, Inc.  
P O Box 679  
LaGrange, KY 40031

Dear Mr. Wigginton:

This is in response to your February 6, 2001 letter, regarding the "Applicable Discount" in Attachment 1, Exhibit A of the Resale Agreement between BellSouth and Universal dated October 18, 2000. You advised that Universal will not require BellSouth's operator and directory services and requested the 21.56% discount rate.

Pursuant to the Second and Final Order of Arbitration Awards in Tennessee Regulatory Authority Dockets 96-01152 and 96-01271, the Arbitrators set the wholesale discount, for retail services sold by BellSouth, where operator services and directory assistance are not bundled at 21.56%. When the services are not bundled, BellSouth would arrange a network so as to automatically route all operator services and directory assistance calls from a carrier's customer to a destination specified by that carrier.

In reviewing your current Agreement, operator services and directory assistance are bundled services, which means Universal's customers can still access these services. According to the Order, these bundled services are entitled to a 16% discount rate. Therefore, because these services are still bundled, BellSouth disagrees with your assertion that you are entitled to a 21.56% discount rate.

Please feel free to call me at 404-927-7596, if you have additional questions.

Sincerely,

A handwritten signature in cursive script that reads "Nicole Bracy".

Nicole Bracy  
Manager-Interconnection Services



Attorneys at Law

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462 South Fourth Avenue  
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March 7, 2001

Nicole Bracey  
Manager-Interconnection Services  
BellSouth Interconnection Services  
34870 BellSouth Center  
675 W. Peachtree Street, NE  
Atlanta, GA 30375

BellSouth Telecommunications, Inc.  
Account Team  
600 N. 19th Street  
Birmingham, AL 35203

General Attorney-COU  
Suite 4300  
675 W. Peachtree Street  
Atlanta, GA 30375

**Re: Universal Telecom, Inc.; February 27, 2001 Letter**

Dear Ms. Bracey:

As counsel to Universal Telecom, Inc., we have been asked to respond to BellSouth's letter dated February 27, 2001. That letter was in response to Universal Telecom's February 6, 2001, letter in which Bell South was notified pursuant to attachment 1, page 16, Exhibit A ("Applicable Discounts"), section "\*\*\*\*" of the Agreement dated October 16, 2000 ("Agreement"), that Universal Telecom would no longer require BellSouth's operator and directory services. BellSouth's February 27 letter was non-responsive to that notification.

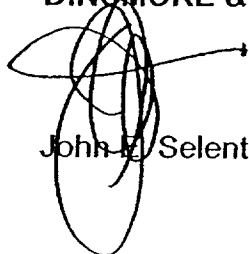
We are requesting that BellSouth unbundle its operator and directory assistance services, as contemplated in the above-referenced section of the Agreement. Please take whatever actions are required to unbundle these services. If BellSouth will not, as it is required to do by the Telecommunications Act of 1996, provide unbundled telecommunications services to Universal Telecom, please explain that refusal.

Because this letter does no more than restate Universal Telecom's original notification of its desire to unbundle operator and directory assistance services, we believe that Universal Telecom will qualify for the 21.56% discount rate, at the latest, as of March 8, 2001, thirty (30) days beyond its proper notification to BellSouth.

Thank you.

Very truly yours,

**DINSMORE & SHOHL LLP**

A handwritten signature in black ink, appearing to read "John M. Selent", is written over the printed name. The signature is stylized with loops and a horizontal line extending to the right.

John M. Selent

JES/dka  
cc: David Wigginton  
#57280.1



Attorneys at Law

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April 13, 2001

**VIA REGULAR MAIL**

Nicole Bracey  
Manager-Interconnection Services  
BellSouth Interconnection Services  
34870 BellSouth Center  
675 W. Peachtree Street, NE  
Atlanta, GA 30375

**Re: Universal Telecom, Inc.**

Dear Ms. Bracey:

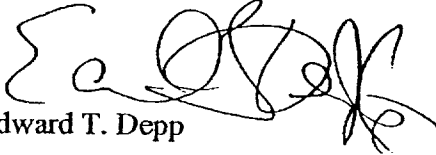
We have not received BellSouth's letter explaining its refusal to provide Universal Telecom, Inc. with the 21.56% resale discount rate. During our teleconference, you stated that we would receive BellSouth's explanatory letter by last Friday, April 7, 2001. Nearly a week later, we still have not received that letter.

We continue to await your prompt response.

Thank you.

Sincerely,

DINSMORE & SHOHL LLP



Edward T. Depp

ETD/gd

cc: David Wigginton  
John E. Selent, Esq.

::ODMAMHODMA\LOUIS;58508;1





BellSouth Interconnection Services  
34P70 BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375

April 17, 2001

Mr. John E. Selent  
Dinsmore & Shohl LLP  
2000 Meidinger Tower  
462 South Fourth Avenue  
Louisville, KY 40202

Re: Universal Telecom, Inc.

Dear Mr. Selent:

This is in response to your letter dated March 7, 2001, and our call of March 29, 2001, regarding the unbundling of BellSouth's Operator Services and Directory Assistance (OS/DA).

In an effort to summarize BellSouth's position, I will provide some background on this issue. In 1997, the Tennessee Regulatory Authority (TRA) ordered a 16% discount for resold services that include BellSouth's provision of OS/DA, and a 21.56% discount when BellSouth is not providing OS/DA. Specifically, the TRA stated that the 21.56% discount would apply when OS/DA is not bundled.

Additionally, your reference to the Telecommunications Act of 1996 is incorrect. In 1999, the Federal Communication Commission's (FCC) Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (Unbundled Network Element (UNE) Remand Order) modified the Act in that ILECs are not required to unbundle OS/DA services pursuant to section 251 (C) (3), except in limited circumstances where an ILEC does not provide customized routing to a requesting carrier to allow it to route traffic to alternative OS/DA providers. It is BellSouth's position that it has provided sufficient customized routing, and therefore is not required to provide OS/DA as a UNE.

Specifically, Universal Telecom advised BellSouth that it would no longer require the BellSouth OS/DA service, and requested BellSouth to unbundle OS/DA instead so Universal Telecom could receive the higher discount rate of 21.56%. Unless Universal Telecom has its end user calls routed to its own OS/DA platform, or to an alternate provider's OS/DA platform, Universal Telecom's end users still have access to BellSouth's OS/DA. Therefore, simply stating that Universal Telecom will not require BellSouth's OS/DA does not qualify Universal Telecom for the higher discount. Consistent with this explanation, Universal Telecom will need to route its calls to its own OS/DA platform or to an alternate provider's platform to be entitled to the higher discount rate of 21.56%.

Currently, BellSouth offers two options that provide customized routing as referenced above. They are Selective Carrier Routing via Line Class Codes (LCC), and Advanced Intelligence Network (AIN) Selective Carrier Routing. In order to have access to these options, Universal Telecom will need to amend the current Resale Agreement to include these provisions.

Upon selection of a customized routing option, Universal Telecom can order the routing option through Universal Telecom's Account Executive. The Account Executive will provide Universal Telecom with all of the appropriate ordering forms and instructions required to identify to BellSouth the entirety of Universal Telecom's request.

Upon Universal Telecom's request, I will forward an amendment to add provisions for LCC SCR and AIN SCR. I can be reached at 404-927-7596, if there are additional questions.

Sincerely,

A handwritten signature in black ink, reading "Nicole Bracy". The signature is fluid and cursive, with the first name "Nicole" and last name "Bracy" clearly distinguishable.

Nicole Bracy  
Manager – Interconnection Services

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April 20, 2001

## VIA REGULAR MAIL

Ms. Nicole Bracey  
Manager-Interconnection Services  
BellSouth Interconnection Services  
34870 BellSouth Center  
675 W. Peachtree Street, NE  
Atlanta, GA 30375

**Re: Universal Telecom, Inc.**

Dear Ms. Bracey:

Thank you for your April 17, 2001, letter explaining BellSouth's refusal to provide Universal Telecom, Inc. ("Universal Telecom"), with a 21.56% discount rate. We have reviewed the Federal Communication Commission's ("FCC's") Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (Unbundled Network Element (UNE) Remand Order), and this letter shall constitute our continued assertion of Universal Telecom's right to a 21.56% discount rate on both a retroactive and prospective basis.

The FCC's order in that case addressed the pointed issue of whether ILEC's are required to provide *access* to OS/DA as an unbundled network element. The FCC ordered that ILEC's need not provide *access* to OS/DA as an unbundled network element, relying on the rationale that a sufficiently competitive market for the provision of third-party OS/DA services refuted the petitioning CLEC's argument that an ILEC's refusal to provide OS/DA as an unbundled network element "impaired" its abilities to offer telecommunications services.

Universal Telecom's position is clearly distinguishable; it is not asking for *access* to OS/DA. Thus, the FCC's rationale that a sufficiently competitive market of third-party OS/DA providers is available proves completely irrelevant in this circumstance. BellSouth has offered no other rationale of its own, nor has it explained why it believes the Order in that case applies to Universal Telecom's request, given the considerable factual dissimilarities between that scenario and the current one.

The issue under the Telecom Act is whether BellSouth's refusal to give Universal Telecom the 21.56% discount rate (as opposed to the 16% discount it currently receives) "impairs" Universal Telecom's ability to provide telecommunications services. The Telecom Act prohibits an ILEC from so impairing a CLEC.

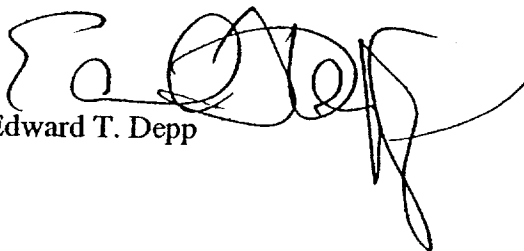
Universal Telecom does not utilize OS/DA, nor does it wish to receive OS/DA as part of its bundled network elements. Furthermore, the decision as to whether to provide OS/DA access for customers lies with Universal Telecom, as the carrier, and *not* BellSouth. As a result of BellSouth's refusal to unbundle OS/DA, however, BellSouth is charging Universal Telecom 5.56% more than its services should cost. This injury is both retroactive and prospective; and most importantly, it impairs Universal Telecom's ability to provide competitive telecommunications service. Finally, it bears reiteration that the rationale for the FCC Order that BellSouth cites in support of its refusal to increase Universal Telecom's discount rate is *completely* inapplicable to this circumstance. BellSouth should, therefore, unbundle OS/DA services for Universal Telecom and provide it with the 21.56% discount rate to which it is entitled.

The fact here is simple: BellSouth cannot, as a condition of entering into a resale agreement, force Universal Telecom to purchase OS/DA services that it does not desire, and this is, in effect, BellSouth's position. If BellSouth has other authority supporting its position or more squarely addressing the issue with which we have presented it, please identify it. Otherwise, we ask BellSouth one final time to please unbundle OS/DA and provide Universal Telecom with the 21.56% discount rate to which it is entitled.

Please respond affirmatively to this letter within fourteen (14) calendar days. Otherwise, we will consult with our client as to the legal options available to it. Thank you.

Sincerely,

DINSMORE & SHOHL LLP



Edward T. Depp

EDT/gd

cc: Mr. David Wiggington  
John E. Selent, Esq.

::ODMA\HODMA\LOUIS;58706;1

DINSMORE  
& SHOHL LLP



BellSouth Interconnection Services  
34P70 BellSouth Center  
675 West Peachtree Street, N.E.  
Atlanta, Georgia 30375

May 4, 2001

Mr. Edward T. Depp  
Dinsmore & Shohl LLP  
2000 Meidinger Tower  
462 South Fourth Avenue  
Louisville, KY 40202

Re: Universal Telecom, Inc.

Dear Mr. Depp:

This is in response to your letter dated April 20, 2001, concerning Universal Telecom, Inc.'s (Universal Telecom) request for BellSouth to unbundle Operator Services and Directory Assistance (OS/DA) and to provide Universal Telecom with a 21.56% discount rate.

BellSouth is not required to unbundle OS/DA when sufficient customized routing is provided. It is BellSouth's position that it is providing sufficient customized routing, and Universal Telecom will need to have its end user calls routed to its own OS/DA platform or to an alternate provider's platform, to prevent Universal Telecom's end users from having access to BellSouth's OS/DA.

In my February 27, 2001 letter, the reference to the Federal Communication Commission's (FCC) Third Report and Order and Fourth Further Notice of Proposed Rulemaking [FCC 99-238] (Unbundled Network Element (UNE) Remand Order) was cited due to your request for BellSouth to unbundle OS/DA based on the requirements of the Telecommunications Act of 1996.

Further, by your own admission, Universal Telecom is not utilizing OS/DA nor does it want access to OS/DA. Therefore, Universal Telecom is not entitled to the higher discount rate of 21.56% in the state of Tennessee. Universal Telecom's Resale Agreement clearly states that Universal Telecom must provide its own OS/DA in order to receive the higher discount rate.

I will be happy to schedule a meeting to discuss this issue further in order that we may bring this matter to closure.

Sincerely,

Nicole Bracy  
Manager - Interconnection Services

